

**UNITED STATES DISTRICT COURT
FOR
THE DISTRICT OF MASSACHUSETTS**

CIVIL ACTION NO. 04-10815 MLW

**ADAM J. VISNICK
and
HOWARD VISNICK
Plaintiffs**

vs.

**SANCTUARY 4298 INVESTMENTS LLC
Defendant**

**MOTION FOR EXPEDITED HEARING AND PRELIMINARY INJUNCTION
DATED MAY 6, 2004**

Now comes the plaintiff Adam J. Visnick and respectfully moves this Honorable Court pursuant to Fed.R.Civ.P. Rule 65 to schedule an expedited hearing and issue a preliminary injunction. (A proposed form of ORDER is attached hereto.)

The plaintiff Adam Visnick assigns as reasons therefore the following:

1.) Adam Visnick is the owner of a home at 15A Plum Street in Gloucester, Massachusetts. This is his principal residence. (Visnick Affidavit, par. 1)

2.) The defendant Sanctuary 4298 Investments LLC is a lender who holds a first mortgage on the property. (Visnick Affidavit, pars. 8-9) The lender has declared a default under the Mortgage Note with a principal amount of \$260,000 dated January 20, 2003. (Visnick Affidavit, pars. 13-14)

3.) The lender violated the Truth in Lending Act, 15 U.S.C. §1640 and regulations promulgated thereunder, 12 C.F.R. §226.23 by failing to give notice to Adam Visnick of his right to rescind at the closing. (Visnick Affidavit, pars.9, 16; Complaint, pars. 10, 12) As a result of the

violation, Adam Visnick owes no more than \$238,400 to the defendant. (Memorandum)

4.) When Adam Visnick learned of his right to rescind, he gave notice of his intention to rescind. (Visnick Affidavit, pars.16-17)

5.) The defendant Sanctuary again violated the Truth in Lending Act and regulations thereunder, refused to rescind, and scheduled a foreclosure sale of the Visnick home for May 19, 2004. (Visnick Affidavit, pars. 18-21; Complaint, pars. 16-20, 22-25)

6.) Adam Visnick obtained a commitment for refinancing in the amount of \$275,000 and attempted to schedule a closing for the payoff of the Sanctuary mortgage in an amount calculated consistent with the Truth in Lending Act. Sanctuary refused to participate in the closing. (Affidavit of Adam Visnick.)

7.) On May 5, 2004 Adam Visnick entered into a Contract to Purchase for the sale of the property in the amount of \$420,000. The closing is to occur on or before July 31, 2004. (Howard Visnick Affidavit, par. 20)

8.) If the foreclosure sale proceeds, it will cause immediate and irreparable harm.

9.) The plaintiff Adam Visnick prays for an expedited hearing and the issuance of a preliminary injunction in his Complaint. (Complaint, pages 6-7)

10.) The defendant was served with a copy of the Complaint on May 4, 2004. (A faxed copy of the return of service is attached hereto.)

(A proposed Order and Memorandum in Support hereof are filed herewith.)

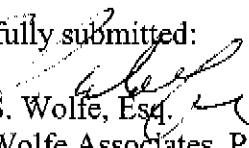
WHEREFORE, Adam Visnick prays:

- 1.) That this Honorable Court schedule the hearing of this Motion on an expedited basis.
- 2.) That this Honorable Court preliminarily enjoin the foreclosure of the Visnick residence.
- 3.) That this Honorable Court order the defendant to discharge the mortgage at the closing

subject to the deposit of \$275,000 from the closing proceeds with the Clerk of Court to secure the defendant against any losses as may be adjudicated by final judgment..

4.) That this Honorable Court grant any such further relief which may be just and equitable.

Respectfully submitted:


Robert S. Wolfe, Esq.
Robert Wolfe Associates, P.C.
65 Middle Street
P.O. Box 1600
Gloucester, Ma. 01931
(978) 281-0190
BBO # 532500

May 6, 2004

CERTIFICATE OF SERVICE

I, Robert S. Wolfe, Esq., hereby certify that I have served a copy of the foregoing papers upon the defendant and counsel by Express Mail at the following addresses:

David M. Wardwell, Esq.
92 State Street
Boston, Ma. 02109

Sanctuary 4298 Investments, LLC
647 Sanctuary Drive
Boca Raton, Fla. 33431

May 6, 2004


Robert S. Wolfe

County N/ACourt UNITED STATES DISTRICT COURT
State of MASSACHUSETTS*Affidavit of Service*

ADAM J VISNICK AND HOWARD VISNICK

Plaintiff

SANCTUARY 4299 INVESTMENTS LLC

Defendant

STATE OF FLORIDA
COUNTY OF PALM BEACH
CITY OF WEST PALM BEACH

D/S P. Regan of the Sheriff's Office of Palm Beach County, being duly sworn, deposes and says that he is not a part to this action and he is over eighteen years of age; that he is a resident elector of the County of Palm Beach County, State of Florida;

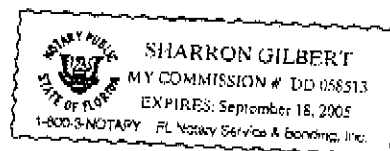
That on 5/4/2004 at 10:25AM deponent served the following SUMMONS & COPY & COPY OF COMPLAINT, MOTION FOR SHORT ORDER OF NOTICE RE: HEARING ON PRELIMINARY INJUNCTION WITH PROPOSED FORM OF ORDER, AFFIDAVIT OF ADAM VISNICK DATED APRIL 22, 2004, CIVIL COVER SHEETon SANCTUARY 4298 INVESTMENTS LLC defendant therein named.PERSONALLY by personally delivering to and leaving with said defendant a true copy thereof, and that he/she knew the person so served to be the person mentioned and described in the above documents.SUBSTITUTE by delivering a true copy thereof to and leaving with _____ a person of suitable age (above the age 15 years) at his/her usual place of abode, and informing the person of the contents thereof (as defined in F.S. 481.031(1)).CORPORATION by delivering to and leaving with _____ of the Corporation at given address.X OTHER/SUPPLEMENTAL INFORMATION PARTNERSHIP BY SERVING
ROBERT S ABRAMS AS PARTNEREDWARD W. BIELUCH, SHERIFF
PALM BEACH COUNTY, FLORIDA

D/S P. Regan #4358

This notary and the sworn Deputy Sheriff are both employed by the Palm Beach County Sheriff's Office

Sworn to before me this 5th
day of April A.D. 2004
at West Palm Beach, Florida

Sharron Gilbert - Notary Public



**UNITED STATES DISTRICT COURT
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CIVIL ACTION NO. 04-10815 MLW

**ADAM J. VISNICK
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Plaintiffs

vs.

SANCTUARY 4298 INVESTMENTS LLC
Defendant

FINDINGS AND ORDER DATED MAY , 2004

After considering the Motion for Expedited Hearing and Preliminary Injunction, Affidavits, Memoranda and argument, the Court makes the following preliminary FINDINGS and ORDERS:

A. FINDINGS:

1. Sanctuary 4298 Investments LLC made a six month consumer loan in the amount of \$260,000 to Adam Visnick evidenced by a Note and Mortgage dated January 20, 2003. The principal of the Note included prepaid interest of \$15,600 and a commitment fee of \$6,000.
2. The residential mortgage encumbered the home located at 15A Plum Street, Gloucester, Massachusetts. The home was owned by Adam Visnick, and he resided therein.
3. Adam Visnick was a consumer within the meaning of the Truth in Lending Act,

15 U.S.C. §1640 and 12 C.F.R. §226.23.

4. The loan advanced by Sanctuary was subject to the Truth in Lending Act, 15 U.S.C. §1640 and 12 C.F.R. §226.23.
5. Sanctuary failed to make the disclosures required of lenders under the Truth in Lending Act, 15 U.S.C. §1640 and 12 C.F.R. §226.23.
6. Sanctuary initiated foreclosure proceedings and asked Adam Visnick to waive his rights to rescind under the Truth in Lending Act, 15 U.S.C. §1640 and 12 C.F.R. §226.23.
7. Adam Visnick refused to waive his rights and exercised his right to rescind by sending a written Notice to Cancel on March 23, 2004.
8. Sanctuary refused to cancel its security interest in the residence and cancel the pending foreclosure sale required of lenders under the Truth in Lending Act, 15 U.S.C. §1640 and 12 C.F.R. §226.23.
9. Adam Visnick obtained a written financing commitment to pay Sanctuary the monies due Sanctuary under the Truth in Lending Act, but Sanctuary refused to accept the payment.
10. Adam Visnick entered into a Contract to Purchase for the sale of his residence in the amount of \$420,000 with the sale to occur on or before July 31, 2004.
11. Sanctuary has scheduled a foreclosure sale for May 17 or 19, 2004.
12. Sanctuary failed to cancel the foreclosure sale as required of lenders under the Truth in Lending Act, 15 U.S.C. §1640 and 12 C.F.R. §226.23.
13. There is a reasonable likelihood that Adam Visnick owes Sanctuary an amount

not to exceed \$235,000.

14. A foreclosure sale would cause immediate and irreparable harm to Adam Visnick.

B. ORDERS:

- 1.) Sanctuary 4298 Investments LLC is preliminarily enjoined from foreclosing on the property of Adam Visnick at 15A Plum Street, Gloucester, Massachusetts.
- 2.) Sanctuary 4298 Investments LLC shall discharge its outstanding mortgage on the property of Adam Visnick at 15A Plum Street, Gloucester, Massachusetts in the event Adam Visnick refinances or sells the aforesaid property subject to the condition that Adam Visnick posts with the Clerk \$275,000 to secure any losses of Sanctuary subject to a final judgment herein.

Wolf, J.

Dated: